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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF  
**NORTHERN ARIZONA ENERGY, LLC**, IN  
CONFORMANCE WITH THE REQUIREMENTS  
OF ARIZONA REVISED STATUTES 40-360.03  
AND 40-360.06, FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATABILITY  
AUTHORIZING CONSTRUCTION OF A 175  
MW NATURAL GAS-FIRED, SIMPLE CYCLE  
GENERATING FACILITY AND ASSOCIATED  
TRANSMISSION LINE INTERCONNECTING  
THE GENERATING FACILITY TO THE  
ADJACENT WESTERN AREA POWER  
ADMINISTRATION GRIFFITH SWITCHYARD,  
ALL LOCATED IN MOHAVE COUNTY,  
APPROXIMATELY 9 MILES SOUTHWEST OF  
KINGMAN, ARIZONA

Case No. \_\_\_\_\_

Docket No. L-00000FF-07-0134-00133

**PETITION**

Northern Arizona Energy, LLC, hereby petitions the Arizona Corporation Commission ("Commission") to exercise the Commission's discretion pursuant to A.R.S. 40-360.02, for good cause, to allow full consideration of the Application for Certificate of Environmental Compatibility for the proposed Northern Arizona Energy Project generating plant notwithstanding the omission of a plan filing 90 days in advance of the filing of such Application.

Arizona Corporation Commission  
**DOCKETED**

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## I. BACKGROUND AND OVERVIEW.

Northern Arizona Energy, LLC, ("Applicant"), an affiliate of LS Power Generation, LLC, proposes to construct a small electric generating facility comprising four simple-cycle gas turbine generators of approximately 45 MW each. It will be located on a 40-acre portion of the original 160 acre site covered by the Certificate of Environmental Compatibility ("CEC") issued by the Commission in 1998 for the existing Griffith Energy combined-cycle generating facility in Mohave County, Arizona. The proposed new peaking generation facility will be known as the *Northern Arizona Energy Project* ("NAEP")<sup>1</sup>. The NAEP will interconnect with the Western Area Power Administration ("Western") integrated transmission system at the existing Griffith Switchyard adjacent to the NAEP site, and all generation from the NAEP will be transmitted via Western's 230kV transmission system to the ultimate load serving utilities.<sup>2</sup>

A.R.S. 40-360.02 provides, in subsection B, that, at least 90 days prior to filing an application for a CEC to site a new generating plant, the applicant is to file a "plan" with the Commission. The plan is to include seven items of information, which are listed in subsection C.<sup>3</sup> Item number 7 provides as follows:

7. The plans for any new facilities shall include a power flow and stability analysis report showing the effect on the current Arizona electric transmission system. Transmission owners shall provide the technical reports, analysis or basis for projects that are included for serving customer load growth in their service territories.

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<sup>1</sup> This project was initially announced publicly as the "Arroyo Energy Project", but was renamed the "Northern Arizona Energy Project" to avoid any conflict with a recently discovered business operating nationally under the Arroyo Energy name.

<sup>2</sup> UniSource Energy Services is the immediate local load serving utility.

<sup>3</sup> The first six items of plan information called for, and the specific summary responses for the NAEP, are as follows:

1. *location*: adjacent to Griffith Energy Project, 9 miles South of Kingman, Mohave County, Az;
2. *purpose*: generation of peaking capacity and energy for local load-serving utilities;
3. *est. operational date*: summer 2008/2009, depending upon permits and contracts timing;
4. *avg. and max. power output*: 4 units, independently dispatchable, at approx. 45 MW per unit;
5. *capacity factor*: less than 30% ( 2500 hours per year);
6. *fuel type*: natural gas.

At the earliest stages of planning for the NAEP, a federally-required Generation Interconnection Application was filed with Western pursuant to Western's Open Access Transmission Tariff; and that application was accepted as complete on September 28, 2006. Western's processes for responding to such matters do not generally move quickly; and in this case, diligent efforts of the representatives of Western and Applicant produced a final "Interconnection System Impact Study Agreement" that was executed on December 22, 2006. Pursuant to that study agreement, Western, as the transmission owner, is currently proceeding to perform a System Impact Study ("SIS") that will examine the power flow and stability impacts of the NAEP generators on the current Arizona electric transmission system.

Unfortunately, Applicant has no control over the timing of Western's completion of the SIS, which is presently projected to potentially require an additional 60-90 days<sup>4</sup>. Until the SIS is completed by Western, Applicant is unable to file a plan that satisfies the requirements of A.R.S. 40-360.02.

The NAEP is being proposed to respond to imminent peaking generation needs of the local utility in order to serve the dramatic load growth in the Mohave County region. The timetable for completion of the CEC and other regulatory permitting processes, and subsequent equipment procurement, and construction of the project in order to timely meet those needs, requires that Applicant file its CEC application and take all other reasonable efforts to commence those time-consuming processes as quickly as possible. Therefore, notwithstanding the present inability to file a complete plan until Western completes the SIS, Applicant is filing an incomplete plan (without Item No. 7), together with its Application for a CEC for the NAEP (the

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<sup>4</sup> Applicant is exploring the possibility of arranging for a qualified engineering firm to conduct the SIS as an independent contractor working for Western, at Applicant's expense, in an effort to expedite the SIS.

“NAEP CEC Application”), concurrently with this Petition. A copy of that plan is attached to this Petition as Exhibit 1.

Applicant commits that it will continue its diligent efforts with Western to expedite the SIS, and will promptly file the SIS with the Commission and with the Power Plant and Transmission Line Siting Committee (“Committee”) as soon as it is made available to Applicant by Western.

It is reasonably expected that the Committee hearing and evaluation process for consideration of the NAEP CEC Application would, in any event, continue for a period after the SIS is completed by Western, during which time the SIS will be available for review by the Committee and Commission staff prior to any issuance of a CEC. If, however, such late delivery of the SIS causes Commission staff to require an extension of the 180-day period for issuance of a CEC<sup>5</sup> in order to adequately complete staff’s review, Applicant will agree to such reasonable extension. All of the plan information, including the required SIS, will also be available to the Commission staff for purposes of the ten year planning and biennial assessment process, fulfilling the underlying policy basis for the requirement of a plan filing.

Based on preliminary evaluation and discussions with Western’s staff and others familiar with the affected transmission system, it is not expected that interconnection and operation of the NAEP peaking generators will impact the Arizona transmission system in any manner requiring system upgrades or modifications. Because confirmation of that expectation must await completion of the Western’s SIS, however, Applicant hereby commits to accept, as an express condition of a CEC issued for the NAEP facility, the obligation to complete any transmission system upgrades or modifications as may be required by Western pursuant to the final SIS, as part of construction of the NAEP facilities.

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<sup>5</sup> See, A.R.S. 40-360.04 (D) and Ariz. Admin. Code R14-3-209

Accordingly, for the reasons set forth in this Petition, Applicant requests the Commission to exercise the discretion provided by Subsection D of A.R.S. 40-360.02, for good cause, in order to allow full consideration of the NAEP CEC Application by the Committee at this time, notwithstanding the failure to file a plan 90 days in advance of that Application.

**II. THE GOVERNING STATUTE CLEARLY VESTS IN THE COMMISSION THE DISCRETION TO CONSIDER A CEC APPLICATION NOTWITHSTANDING OMISSION OF A 90-DAY ADVANCE PLAN FILING, ESPECIALLY WHERE THERE IS GOOD CAUSE FOR THE OMISSION.**

Subsection E of A.R.S. 40-360.02 sets forth the legal consequences of a CEC applicant's failure to file a plan 90 days prior to its CEC application, as follows:

E. Failure of any person to comply with the requirements of subsection A, B or C of this section may, in the commission's discretion in the absence of a showing of good cause, constitute a ground for refusing to consider an application of such person. [emphasis added]

The statute does not mandate automatic rejection of an application that is not preceded by a plan filed 90 days earlier, under any circumstances. Instead, it provides that the Commission may find such omission to be a ground for rejection, in the absence of a showing of good cause for the omission. Conversely, in a case where good cause is shown, the plain language of subsection E can only reasonably be construed to either *require* consideration of the application notwithstanding the justified omission or, alternatively, to at least *allow* such consideration at the Commission's discretion. Without having to put too fine a point of interpretation on a subsection of the statute that, to Applicant's knowledge, has not previously been construed by the Commission, it is indisputable that the statute clearly vests in the Commission ample discretion to allow consideration of a CEC application that is filed without a 90-day pre-filed plan, and especially where there is good cause for the omission.

In this case, Applicant finds itself in the proverbial "Catch 22". It needs to commence and complete the CEC process as soon as possible in order for the project to timely fulfill its purpose and need; yet, Applicant has been and still is unable, for reasons outside its control, to produce in advance the SIS that must be a component of a companion process -- the plan. Hence, Applicant needs the Commission to exercise its discretion for good cause, in this case, to allow two parts of the process -- the SIS and plan completion and review, and the CEC Application review -- to proceed *concurrently* instead of sequentially with a material delay in between.

If the Commission were to deny this Petition and conclude that the CEC process could not even commence until after Western has completed the SIS (hopefully less than 90 days), and Applicant has to then wait yet an additional 90 days before the NAEP CEC Application could be considered by the Committee, then the Project would encounter an additional delay of potentially half a year, and the NAEP generators would not be available to meet summer peak loads until a full year later. No public purpose would be served by such additional delay; and, importantly, neither would such delay enhance the value or utilization of the plan data by the Commission staff in the ten year planning or biennial assessment processes.

**III. DISCRETION SHOULD BE LIBERALLY APPLIED TO A PLAN THAT, FOR GOOD CAUSE, IS FILED LATE, INASMUCH AS PRE-FILED PLANS, BY STATUTE, ARE ONLY TENTATIVE AND SUBJECT TO POST-FILING CHANGES AT ANY TIME; AND THE INTEGRATION OF THE PLAN DATA INTO THE BIENNIAL ASSESSMENT IS UNAFFECTED BY THE TIMING OF CONSIDERATION OF THE CEC APPLICATION.**

Applicant appreciates and supports the important purposes for which the plans for new transmission and generation facilities, particularly the SIS, are used by the Commission in the context of the ten year planning and biennial assessment processes. But, it should be noted that the statute calling for the plans expressly cautions that the substantive information submitted in

the plans is of only limited reliability and significance to the Commission. Subsection F of A.R.S. 40-360.02 provides as follows:

- F. The plans shall be recognized and utilized as tentative information only and are subject to change at any time at the discretion of the person filing the plans.

Given that an applicant is allowed to unilaterally and without consequence change the information submitted in a plan at any time after it is filed, it would follow that the Commission should be liberal in exercising its discretion with respect to the severity of the consequences of an applicant, for good cause, providing the plan information at a later but reasonable time, during the CEC consideration process, as opposed to 90 days in advance thereof. That discretionary consideration should apply particularly where the key missing information for the plan (the Western SIS) must be developed and provided by a third party governmental agency outside the control of the applicant, the applicant has made timely, diligent efforts to obtain that information as quickly as feasible, and there is a recognized need to timely complete the proposed project in order to meet demonstrated load growth requiring the particular type of generation facility being proposed and at the particular location proposed.

When analyzing the implications to Commission staff of granting this Petition, it is important to consider the primary context of the underlying statutory requirement – i.e., facilitation of the Commission's ten year planning and biennial assessment programs. It is Applicant's understanding that the next biennial review and assessment is not scheduled to be completed until the end of 2007. For those purposes, the Western SIS is the critical component of the "plan" for the NAEP facility. Regardless of the Commission's ruling regarding timing of Committee consideration of the CEC Application, the SIS will still be available for staff review as soon as it is completed by Western, with time for integration into the ten year planning and

next biennial assessment. And, whether the CEC Application is allowed full consideration concurrently, or only after the SIS is done and an additional 90-day delay incurred, will have no adverse impact upon Commission staff's next biennial assessment process. The CEC consideration timing will only adversely impact Applicant's ability to have the generators in place to meet the summer peak load growth one summer earlier.

Also, with respect to the staff's use of the plan information in performing its role in the CEC process, Applicant will, as noted above, agree to an extension of the CEC issuance period if it proves necessary for staff to request such extension due to the late submission of the SIS. And any transmission system modifications required by the interconnection of the NAEP generators, as reflected by Western's SIS, will be imposed as conditions of the CEC.


#### **IV. CONCLUSION.**

Applicant submits that the instant case, albeit one of first impression construing the statute at issue, presents ample distinguishing facts and circumstances constituting good cause for the Commission to exercise its discretion expressly granted by that statute, and to allow the Committee to presently consider the NAEP CEC Application, on condition that (1) the SIS will be submitted to the Committee and the Commission promptly upon its completion by Western, (2) Applicant will agree to reasonable extension of the 180-day CEC issuance period if needed by staff due to late submission of the plan, and (3) any transmission system modifications required by the SIS shall be imposed as conditions of any CEC allowing construction of the NAEP facilities. Therefore, in accordance with A.R.S. 40-360.02 (E), Applicant respectfully requests the Commission to confirm that the Committee may, in this case only, proceed with full



consideration of the CEC Application filed for the NAEP facilities notwithstanding late filing of the plan.

Respectfully submitted this 2<sup>nd</sup> day of March, 2007.

By:   
Jay I. Moyes  
Moyes Storey, Ltd.  
Attorneys for Applicant,  
Northern Arizona Energy, LLC

Original & 25 copies filed  
this 2<sup>nd</sup> day of MARCH, 2007,  
with:

Docket Control  
Arizona Corporation Commission  
1300 W. Washington  
Phoenix, AZ 85007

With a copy to:

Chris Kempley, Chief Legal Counsel  
Arizona Corporation Commission  
1300 W. Washington  
Phoenix, AZ 85007

Laurie Woodall, Chairman  
Arizona Power Plant & Transmission  
Line Siting Committee  
1275 W. Washington  
Phoenix, AZ 85007

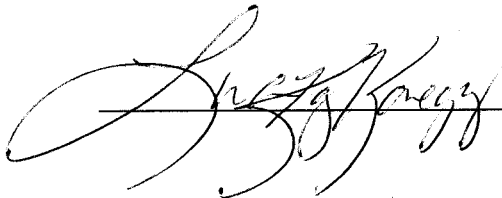


EXHIBIT 1

**PLAN  
for  
Northern Arizona Energy Project**

Submitted by Northern Arizona Energy, LLC  
March 2, 2007

In accordance with A.R.S. 40-360.02, Northern Arizona Energy, LLC (Applicant) hereby submits a plan (Plan) for the Northern Arizona Energy Project (NAEP or Project).

Northern Arizona Energy, LLC, an affiliate of LS Power Generation, LLC, proposes to construct a small electric generating facility comprising four simple-cycle gas turbine generators of approximately 45 MW each. It will be located on a 40-acre portion of the original 160 acre site covered by the Certificate of Environmental Compatibility ("CEC") issued by the Commission in 1998 for the existing Griffith Energy combined-cycle generating facility in Mohave County, Arizona. The proposed new peaking generation facility will be known as the *Northern Arizona Energy Project* ("NAEP"). This project was initially announced publicly as the "Arroyo Energy Project", but was renamed the "Northern Arizona Energy Project".

A.R.S. 40-360.02 provides, in subsection B, that, at least 90 days prior to filing an application for a CEC to site a new generating plant, the applicant is to file a "plan" with the Commission.

For good cause, as explained in the Petition filed with the Commission concurrently with this Plan, Applicant is filing this Plan, with one omission explained below, concurrently with its Application for a CEC for this Project.

**Project Summary**

The Project is comprised of four (4), General Electric LM6000 PC SPRINT NxGen combustion turbine generators ("CTG" or "unit") with inlet air chillers. The Project will be designed to produce 175 MW of net electrical output with a heat rate of 9975 Btu/kWh (HHV) based upon the design condition ambient temperature of 90 degrees Fahrenheit (°F). The CTGs are capable of rapid start-up, allowing the Project to respond to fluctuations in electric demand within ten (10) minutes.

Emissions from the CTGs will be controlled by a combination of water injection and selective catalytic reduction to reduce nitrogen oxides emissions and an oxidation catalyst to reduce carbon monoxide and volatile organic compound emissions.

The NAEP will interconnect with the Western Area Power Administration ("Western") integrated transmission system at the existing Griffith Switchyard adjacent to the NAEP site, and all generation from the NAEP will be transmitted via Western's 230kV transmission system to the ultimate load serving utilities.

Existing infrastructure for the gas, water and electric interconnections and access roads are available to the Project within its property boundary or the adjacent property containing the existing Griffith Energy Project. No new laterals or other off-site infrastructure development are required for the Project, thereby minimizing the environmental impacts associated with the Project.

### **Plan Information**

In compliance with A.R.S. 40-360.02, the specific information to be provided in the Plan is as follows:

**1. The size and location of any transmission lines or location of each plant proposed to be constructed.**

The Project is located in Mohave County Arizona, just west of Interstate 40, approximately three (3) miles north of the Griffith Interchange. The Project is approximately 110 miles southeast of Las Vegas, Nevada via Arizona Highway 93 and 200 miles to the northwest of Phoenix, Arizona. The Project is within the existing I-40 Industrial Corridor just north of Griffith.

The Project is located on an approximately forty (40) acre parcel of land comprising North approximately 700 feet of the Southwest Quarter of Section 6, T. 19 N., R. 17 W., G&SRB&M.

The route of the approximately 2700 feet of 230 kV transmission lines necessary to interconnect the Project generators to the neighboring Griffith Switchyard will be across the southern portion of the 40-acre Project Property, then South inside the Griffith Project property to the Eastern edge of the Griffith Switchyard. There will be no new transmission lines emanating outside of the combined NAEP and Griffith properties.

**2. The purpose to be served by each proposed transmission line or plant.**

The Project will supply power to load serving entities in Arizona and surrounding regions for the purpose of serving their customers during periods of peak electricity demand.

**3. The estimated date by which each transmission line or plant will be in operation.**

Depending upon timing of receipt of the required permits and regulatory approvals authorizing construction, and the execution of power sales agreements with customers, the estimated date of operation is June 2008, at the earliest, or alternatively June 2009.

**4. The average and maximum power output measured in megawatts of each plant to be installed.**

The Project will be designed to produce 175 MW of net electrical output with a heat rate of 9975 Btu/kWh (HHV) based upon the design condition ambient temperature of 90 degrees Fahrenheit (°F). Each of the four (4) combustion turbine generators can operate individually therefore the output can range from a minimum of approximately 25 MW (one unit running at minimum load) to 175 MW with all four (4) units operating at maximum load. Combustion turbine generators are typically dispatched to operate at full load given their service requirements to meet peak demand.

**5. The expected capacity factor for each proposed plant.**

The amount of operating hours and startups for any individual simple cycle unit is dependent on (i) the location, (ii) the load profiles of the customer, (iii) fuel prices, and (iv) the general power market supply and demand conditions. A typical operating profile for a simple cycle turbine will be 1500-3000 operating hours and 150-250 startups per year. The actual annual operating hours and startups of the Project will be determined by the economic dispatch of each unit as determined by customer needs. The expected operating hours, including startup and shutdown periods, for the NAEP is 2500 hours per year. This represents an annual capacity factor if just under 30% (28.54%).

**6. The type of fuel to be used for each proposed plant.**

The NAEP will be fueled by natural gas only.

**7. The plans for any new facilities shall include a power flow and stability analysis report showing the effect on the current Arizona electric transmission system. Transmission owners shall provide the technical reports, analysis or basis for projects that are included for serving customer load growth in their service territories.**

At the earliest stages of planning for the NAEP, a federally-required Generation Interconnection Application was filed with Western pursuant to Western's Open Access Transmission Tariff; and that application was accepted as complete on September 28, 2006. Western's processes for responding to such matters do not generally move quickly; and in this case, diligent efforts of the representatives of Western and Applicant produced a final "Interconnection System Impact Study" Agreement that was executed on December 22, 2006. Pursuant to that study agreement, Western, as the transmission owner, is currently proceeding to perform a System Impact Study ("SIS") that will examine the power flow and stability impacts of the NAEP generators on the current Arizona electric transmission system. Unfortunately, Applicant has no control over the timing of Western's completion of the SIS, which is presently projected to require an additional 60-90 days. Applicant commits to provide the SIS as soon as it is completed by Western.